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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,485	01/19/2001	Dionisio Rio Simoes		6107

7590 03/08/2005

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EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

8W

Office Action Summary	Application No. 09/766,485	Applicant(s) SIMOES, DIONISIO RIO	
	Examiner Pedro Philogene	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(d) the invention was first patented or caused to be patented, or was the subject of an inventor's certificate, by the applicant or his legal representatives or assigns in a foreign country prior to the date of the application for patent in this country on an application for patent or inventor's certificate filed more than twelve months before the filing of the application in the United States.

Claims 1-19 are rejected under 35 U.S.C. 102(d) as being barred by applicant's PCT/EP96/04945.

Since the response to applicant's "Renewed Petition Under 37 C.F.R. 1.37(b)" filed 21 December 2004, is DISMISSED without prejudice, PCT/EP96/04945 is prior art.

The PCT/EP96/04945 international application was filed on 12 November 1996. It was communicated to the USPTO from the International Bureau on 22 May 1998. The twenty-month period for paying the basic fee in the United States expired at midnight on July 1998 (12 July 1998 was a Sunday).

International application PCT/EP96/04945 became abandoned as to the United States at midnight on 13 July 1998 for failure to pay basic national fee.

On 18 August 1998, applicant filed United States national application number 09/135,486 under 35 U.S.C. 111.

On 04 April 2000, U.S. application number 09/135,486 was issued as U.S. patent number 6,045,360.

On 19 January 2001, applicant filed reissue application number 09/766,485 along with a petition under CFR 1.137(b).

However, as to date, the petition is DISMISSED.

In order to claim benefit of international application PCT/EP96/04945 under 35 U.S.C. 120, applicant needed to file a national stage application under U.S.C. 371 or a continuation application under 35 U.S.C. 111 before the international application became abandoned. Applicant failed to timely file either type of application. Furthermore, applicant has not demonstrated that the delay in filing either type of application was unintentional. Rather, the evidence indicates that applicant intentionally filed a regular application under 35 U.S.C. 111 without claiming priority to the international application.

Therefore, claims 1-19 are rejected under 35 U.S.C. 102(d) as being barred by applicant's PCT/EP96/04945.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-19 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Simoes (DE19541222).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


D,113,743	3-1939	Kahn
5,038,755	8-1991	Burgio et al.
5,187,829	2-1993	Atkins
5,353,464	10-1994	Atkins et al.
5,774,921	7-1998	Harrison et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Pedro Philogene
January 26, 2005


PEDRO PHILOGENE
PRIMARY EXAMINER